IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.:	09/626,325	Filed:	July 26, 2000
Applicant:	John S. Yates, Jr., et al.		
Title:	OPERATING SYSTEM FOR COMPUTER WITH TWO ARCHITECTURES		
Atty. Docket:	114596-28-000053WS	Art Unit:	2183

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- Form PTOL-85
- Exception to Examiner's Amendment to Title
- Response to Notice of Allowance

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Respectfully submitted,

WILLKIE FARR & GALLAGHER LLP

Dated: April 20, 2006

By: _____
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EXCEPTION TO EXAMINER'S AMENDMENT TO TITLE

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The title of this application remains
-- OPERATING SYSTEM FOR COMPUTER WITH TWO ARCHITECTURES --.

Because the Examiner's Amendment to the title was not made pursuant to a delegation of authority from the Director or Commissioner, it has no existence as a legal matter. This paper is not properly an amendment; it is a mere confirmation that no Examiner's Amendment was properly made.

The change of title proposed in the Notice of Allowance, ¶ 2, exceeds the Examiner's authority. MPEP § 1302.04 requires that an examiner obtain "applicant's approval" for any substantive amendment to any written portion of the specification. No such approval was sought or obtained.

The Notice of Allowance, ¶ 2, cites to MPEP § 606.01. MPEP § 606.01 does not authorize a unilateral change of the title. Rather, MPEP § 606.01 only gives authority to request a change to the title. In contrast to what happened here, the Examiner did act within MPEP § 606.01 in the Action of 3/24/04 by requesting a change to title, and Applicant provided an

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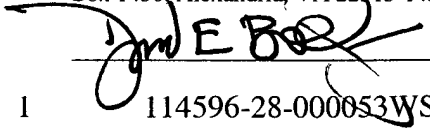

amended title in the paper of 7/26/04. The request for a new title was withdrawn in the Action of 10/27/04, indicating that Applicant's amended title was satisfactory. An agreement having been reached, the Examiner's amendment is now untimely and without basis.

Further, the Examiner's proposed title is not "technically accurate and descriptive" with respect to the inventions claimed. The proposed title contravenes MPEP § 606.01.

It is believed that this paper occasions no fee. If any fee is required, kindly charge any additional fee, or credit any surplus, to Deposit Account No. 23-2405, Order No. 114596-28-000053WS.

Respectfully submitted,

WILLKIE FARR & GALLAGHER LLP

Dated: April 20, 2006

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.:	09/626,325	Confirmation No.:	7939
Applicant:	John S. Yates, Jr., et al.		
Title:	OPERATING SYSTEM FOR COMPUTER WITH TWO ARCHITECTURES		
Filed:	July 26, 2000		
Art Unit:	2183		
Examiner:	Richard Ellis		
Atty. Docket:	114596-28-000053WS		
Customer No.	38492		

RESPONSE TO NOTICE OF ALLOWANCE

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Applicant responds to the Notice of Allowance of January 25, 2006 as follows.

I. Comments on Examiner's Reasons for Allowance

Applicant objects to the Statement of Reasons for Allowance for several reasons. Claim 31 recites as follows:

> 31. A method, comprising the steps of:
>
> in response to an exception raised while executing a thread of a program coded in instructions of a first instruction set architecture, delivering the exception to an execution thread for execution of a handler for the exception, the handler's thread being distinct from the thread in which the program was executing, the handler's thread being an execution thread under an operating system coded in instructions of a second instruction set architecture, the handler being a handler of the operating system.

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Dan E Boss

First, the Statement of Reasons for Allowance misparaphrases several of the interrelationships recited in claim 31. MPEP § 1302.14 instructs that "Care must be taken that [reasons for allowance] do not place unwarranted interpretations, whether broad or narrow, upon the claims." When a federal employee acts contrary to the agency's procedural manual, the resulting action is "illegal and of no effect." *Vitarelli v. Seaton*, 359 U.S. 535, 545 (1959); *Certain Former CSA Employees v. Dept. of Health and Human Services*, 762 F.2d 978, 984 (Fed. Cir. 1985). An examiner's reparaphrase of claims in a Statement of Reasons for Allowance is legally non-existent, and entitled to no weight.

Second, the Reasons for Allowance suggest that only the definition from the IEEE Dictionary was considered. But the IEEE Dictionary itself states that it does not so apply – the IEEE Definition only applies to operating systems that have adopted the relevant IEEE standards. A number of operating systems have not adopted IEEE standards. As noted by Dr. Levine in his Declaration, "the precise definition of 'thread' varies somewhat vendor-to-vendor." Levine Dec. at 3 n. 1. The term "thread" is not confined to the precise definition specified in the IEEE dictionary or the standard from which the dictionary entry was drawn. A number of other statements in the Examiner's Reasons for Allowance are directly contrary to Dr. Levine's Declaration. Examiner argument is not evidence, and is not entitled to weight.

The Reasons for Allowance correctly note that the amendment to the specification does not state a "definition," but rather only states that the "The terms 'process' and 'thread' are used herein in their ordinary and customary, though formal, senses, as actually used in the programming language systems, operating systems, and processor architecture arts," to distinguish the "simplistic and overbroad" definition applied by the Examiner (Levine Dec. ¶ 10). The Reasons for Allowance confirm statements made earlier in prosecution, that certain amendments are not narrowing, but rather make explicit that which was previously inherent, in the manner of *Bose Corp. v. JBL Inc.*, 274 F.3d 1354, 1359-60, 61 USPQ2d 1216, 1218-19 (Fed. Cir. 2001) or *Business Objects, S.A. v. Microstrategy, Inc*, 393 F.3d 1366, 1375, 73 USPQ2d 1520, 1527 (Fed. Cir. 2005) (amendment was broadening, and therefore there was no estoppel).

PTO procedure requires that claims be examined under the "broadest reasonable interpretation consistent with the specification... as they would be understood by one of ordinary

skill in the art." If the claims were not so examined, Applicant requests that allowance be withdrawn, and that the claims be examined in the manner required. If they were so examined, Applicant requests a clarified Statement of Reasons for Allowance.

As noted by the Statement of Reasons for Allowance, each claim recites at least one element that is absent from the closest reference. The combination of limitations recited in each claim is also absent from any proper combination of the references.

II. Correction of Inventorship

In ¶ 5, the Notice of Allowance states that both Dale R. Jurich and Korbin S. Van Dyke are added as inventors. This is not correct. Only Mr. Van Dyke is added; Mr. Jurich was named originally. Applicant requests confirmation that Mr. Jurich is only named once.

III. Conclusion

It is believed that this paper occasions no fee. If any fee is required, kindly charge any additional fee, or credit any surplus, to Deposit Account No. 23-2405, Order No. 114596-28-000053WS.

Respectfully submitted,
WILLKIE FARR & GALLAGHER LLP

Dated: April 20, 2006

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